

NTSB Order No. EA-4270

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 27th day of October, 1994

Docket SE-13773

Administrator's, and affirmed an immediately effective order of the Administrator, dated August 22, 1994, that revoked respondent's airman certificate (No. 401729280, with airline transport pilot privileges), pursuant to Section 609(c)(1) of the Federal Aviation Act of 1958, as amended (hereafter, the "Act"), and section 61.15(a) of the Federal Aviation Regulations (FAR), 14 CFR Part 61.² The appeal will be denied.

Respondent's appeal does not challenge any of the facts on which the revocation of his airman certificate is predicated;

²Section 609(c)(1) of the Act, under the heading Transportation, Distribution, and other Activities Related to Controlled Substances, provides as follows:

The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

Section 609(c)(3) authorizes the Administrator to make orders issued under Section 609(c)(1) immediately effective.

FAR section 61.15, entitled **Offenses involving alcohol or drugs**, authorizes the suspension or revocation of any certificate or rating whose holder has been convicted of a "violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs...."

that is, he does not dispute that he was convicted in a federal court of a drug offense that involved the use of an aircraft. His position, rather, is that the Administrator should not be allowed to revoke his certificate because the order's conclusion that respondent lacks the requisite qualification to be a certificate holder cannot be reconciled with the Administrator's essentially contemporaneous determinations in a related context that contradict such a negative assessment of respondent's fitness to hold his certificate. We think respondent's estoppel argument must be rejected in the circumstances of this case.

Although the record does not disclose respondent's current employment status, during the times relevant to the revocation order, which serves as the complaint here, he was employed by the Administrator as an Aviation Safety Inspector at the Dallas/Fort Worth Flight Standards District Office ("DFW FSDO"). In connection with that position, respondent, on July 7, 1993, was named a Boeing 737 School Designated Examiner (SDE), and in July 1994, that SDE check authority was renewed. The Certificate of Designation for the authority recites, among other things, that respondent "has been found to have the necessary knowledge, skill, experience, interest, and impartial judgment to merit special public responsibility" (Resp. Exh. A). Respondent asserts, without dispute here, that the individuals in the DFW FSDO responsible for issuing the designation on behalf of the Administrator were aware of his indictment for the drug charge on which this action is based before July 1993, and of his

conviction on the charge before July 1994. He therefore argues that the Administrator was not free to issue, just a month later, an order of revocation impugning respondent's qualifications on grounds that apparently did not preclude the SDE designations. We decline to decide whether the Administrator's actions have been fatally inconsistent in this matter, for we believe, as the Administrator argues in his reply brief, that the Administrator had no discretion not to revoke respondent's airman certificate.

The language of Section 609(c)(1) of the Act is unambiguous, and it is mandatory: "[t]he Administrator *shall issue an order revoking the airman certificates of any person upon conviction of such person*" (emphasis added) on State or Federal charges meeting certain conditions, not challenged in this proceeding, concerning the seriousness of a drug offense and the involvement of an aircraft.³ The statute, in other words, embraces a judgment,

³Respondent also suggests that the Administrator did not act expeditiously enough to revoke his certificate because his August 1994 order was not issued until 8 months after the respondent pleaded guilty, on December 6, 1993, to illegal importation of anabolic steroids, in violation of 18 U.S.C. § 545. While we concur with the view that the requirement of the statute that the Administrator revoke an airman certificate "upon conviction" contemplates that he should initiate an action soon after receipt of information concerning convictions for which revocation is mandated, we see no undue or prejudicial delay here. Respondent was sentenced (to a year's probation and ordered to pay a \$2,000 fine and \$1,000 in restitution) in February 1994, and the Administrator issued a proposed notice of certificate action two months later, in April. To be sure, the Administrator may have been able to act with greater dispatch since he knew in early 1993 that the respondent had been indicted; however, he could not act until there was a conviction, and, unlike the situation with an emergency case under Section 609(a), he could not act until he had given the respondent, after the conviction, an opportunity to be heard on the charges (see Section 609(c)(3)).

Notwithstanding the foregoing, we think it doubtful that the

which the Administrator is not authorized to second-guess or overrule, that those convicted of certain carefully-defined crimes may not hold an airman certificate. Thus, it is irrelevant whether the Administrator, or some in positions of authority working for him, agrees that a specific airman's qualification to hold a certificate has been critically called in question by his participation in a crime for which the statute dictates revocation. The Administrator has no choice in such instances but to issue an order imposing that sanction, even where, as here, such an order is at least arguably at odds with positive assessments made of the airman in another context.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and
2. The initial decision and the Administrator's order of revocation are affirmed.

HALL, Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board concurred in the above opinion and order.

(..continued)

Administrator's obligation to revoke an airman certificate in the circumstances specified in the statute can be altered by his own tardiness in complying with the directive.